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the decree entered in this cause at a former day of the term, or that the division line, as established between the parties by the circuit court in its decree of January 23, 1911, is located in accordance with the views expressed in said written opinion, it is adjudged, ordered, and decreed that the decree entered at a former day of the term, affirming the decrees of the circuit court, be and the same is hereby set aside and annulled, in so far as it affirmed the decrees of the trial court in reference to the said lines from the said points B and D to the port warden's line, and the said division line between the parties, and that the cause be remanded to the circuit court, with directions to have the said lines, if not so located, run in accordance with the views expressed in said written opinion, the true division line between the parties established, and for such further proceedings as may be proper in the cause.

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CITY GAS CO. OF NORFOLK *v.* POUDRE.

March 14, 1912.

[74 S. E. 158.]

**1. False Imprisonment (§ 20\*)—Actions—Pleadings—Issues.**—A defendant, who pleads not guilty to a declaration alleging that he wrongfully arrested plaintiff, may introduce any evidence that he did not commit the trespass, though he failed to file his grounds of defense as required by order of court, since Code 1904, § 3249, providing that, if a party fail to comply with an order requiring the filing of grounds of defense, the court may exclude evidence of any matter not described in the pleading of the party, does not deprive a defendant of the right to support a plea of not guilty by evidence as to any matter, the character of which is pointed out by the plea, such as the denial of the wrongful act charged.

[Ed. Note.—For other cases, see False Imprisonment, Cent. Dig. §§ 86-97; Dec. Dig. § 20.\*]

**2. Pleading (§ 370\*)—Grounds of Defense—Filing—Order of Court.**—The object of Code 1904, § 3249, providing that, if a party fails to comply with an order requiring the filing of grounds of defense, the court may exclude evidence of any matter not described in his pleading, is to give plaintiff reasonable notice of the particular defense on which defendant expects to rely, so that he may not be prejudiced by surprise.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. § 1210; Dec. Dig. § 370.\*]

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

Error to Law and Chancery Court of City of Norfolk.

Action by Theodore Poudre against the City Gas Company of Norfolk. There was a judgment for plaintiff, and defendant brings error. Reversed and remanded.

*Loyall, Taylor & White*, for plaintiff in error.

*Daniel Coleman, O. L. Shackelford, and Scott & Buchanan*, for defendant in error.

HARRISON, J. This action of trespass was brought by the plaintiff to recover of the defendant Gas Company damages for its alleged wrongful act in having him arrested. The trial resulted in a verdict and judgment against the defendant which is now to be reviewed.

The first assignment of error is that the lower court declined to permit the defendant to introduce any evidence, because no grounds of defense had been filed, although the general issue had been pleaded, and the plaintiff had replied generally thereto.

Bill of exceptions No. 1, which embodies the defendant's objection to this action of the court, shows that the defendant, at the call of the docket, tendered its plea of not guilty, that the plaintiff replied generally thereto, and that on motion of the plaintiff an order was then and there entered requiring the defendant to file in writing its grounds of defense; that upon the subsequent trial of the case, after the plaintiff had introduced all of his evidence, and the defendant was proceeding to call its witnesses, the court, upon motion of the plaintiff, refused to allow the defendant to introduce any evidence, because it had failed to file its grounds of defense. Thereupon the defendant tendered in writing its grounds of defense, which were rejected because they had not been filed previous to the trial of the case, and thereupon the defendant asked to be allowed to show what would be testified to by his witnesses, in order that a proper bill of exceptions might be made up; but the court declined to allow this to be done, on the ground that the defendant had failed to comply with the order of the court requiring the written grounds of defense to be filed, and therefore could not properly introduce any evidence.

[1] The ruling of the court that, under the circumstances stated in this bill of exceptions, the defendant could introduce no evidence to sustain its plea of not guilty is plainly erroneous. Under the plea of not guilty the defendant had the right to introduce any evidence which showed that it did not commit the alleged trespass, notwithstanding its failure to comply with the order requiring it to file its grounds of defenses.

Section 3249 of the Code of 1904 (which provides that, if a party fails to comply with an order requiring grounds of de-

fense to be filed, the court may, when the case is tried, exclude evidence of any matter not described in the pleading of such party so plainly as to give the adverse party notice of its character) was not intended to deprive a defendant of the right to support his plea of not guilty by the introduction of evidence as to any matter, the character of which was plainly pointed out by the plea itself. Under such circumstances, the evidence of the defendant is confined to the point covered by the language of the plea, namely, the denial of the wrongful act alleged.

Mr. Minor states the form of a plea in an action of trespass as follows: "And the said defendant, by his attorney, comes and says that he is not guilty of the said trespass above laid to his charge, or any part thereof, in manner and form as the said plaintiff hath above thereof complained, and of this the said defendant puts himself upon the country." 4 Minor's Inst. p. 1348.

This is a plain statement that the defendant is not guilty of the trespass alleged and that his defense rests on such denial.

The declaration alleged that the defendant wrongfully arrested the plaintiff. The plea of not guilty gave the plaintiff full notice that the defense relied on was that the defendant did not commit the alleged trespass, and would introduce proof showing that he did not. This, and no more, the defendant had the right to show under his plea of not guilty, because the plea had given plain notice that such evidence would be introduced, which is all the statute required.

[2] The object of section 3249 of the Code is to give the plaintiff reasonable notice of the particular defense upon which the defendant expects to rely, so that he may not be prejudiced by surprise. The statute was not intended to punish the defendant for failing to comply with an order requiring grounds of defense to be filed, but its purpose was to protect the plaintiff against any prejudice he might suffer by reason of such failure.

In support of the contention that the defendant in this case could introduce no evidence to sustain its plea, the plaintiff relies on two recent decisions of this court, namely, *Colby v. Reams*, 109 Va. 308, 63 S. E. 1009, and *Chestnut v. Chestnut*, 104 Va. 539, 52 S. E. 348, 2 L. R. A. (N. S.) 879, 7 Ann. Cas. 802.

In the first-named case, the decision was rested upon the ground that no plea was filed, and, therefore, no issue was joined; the court holding that a judgment could not be sustained which was given upon a verdict rendered as upon the trial of an issue, when no issue had been joined. The subsequent remark, that the plea in that case would, if filed, have been not guilty, and that under it the defendant could not have introduced his evi-

dence, was directed alone to the facts of that particular case. There the evidence of the defendant had been introduced, and the court could see from its inspection that it related to matters not properly provable under the general issue of not guilty, where grounds of defense had been ordered, and not filed, for the reason, as stated, that the plea of not guilty would give the plaintiff no sufficient notice that evidence of the character introduced would be relied on. It was never intended to lay down the broad proposition, now contended for, that, in any case where the defendant fails to comply with an order requiring grounds of defense to be filed, he is thereby deprived of the right to introduce any evidence in his defense, although it be apparent that the plea gave full notice that such evidence would be relied on.

As to the case of *Chestnut v. Chestnut*, supra, it is sufficient to say that there is nothing therein to justify its citation as authority in support of the proposition now under consideration. Opinions of courts, to be correctly understood, should always be read in the light of the facts of the case in which they are rendered.

As the evidence on another trial may change the whole character of the case, we will not consider the other assignments of error made in the petition.

On account of the error we have pointed out, the judgment complained of must be reversed, the verdict of the jury set aside, and the case remanded for a new trial, to be had not in conflict with this opinion.

Reversed.

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CITY OF NORFOLK v. NORFOLK COUNTY WATER CO.

March 14, 1912.

[74 S. E. 226.]

**1. Pleading (§ 214\*)—Demurrer—Admissions.**—Exceptions to an answer, having the effect of a demurrer, admitted all the relevant and properly pleaded allegations thereof as true.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 525-534; Dec. Dig. § 214.\*]

**2. Municipal Corporations (§ 271\*)—Water Supply—Duty to Furnish.**—A city is under an obligation to furnish its citizens, so far as possible, with an adequate water supply, both for public health and safety.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. § 726; Dec. Dig. § 271.\*]

**3. Municipal Corporations (§ 57\*)—Powers.**—A municipal corpo-

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No Series & Rep'r Indexes.